

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

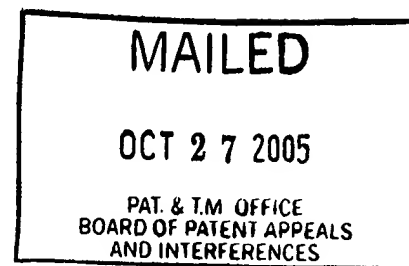
UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte SAMUEL LOIS ISERSON

Appeal No. 2005-2115
Application 09/580,126

HEARD: October 18, 2005



Before KRASS, RUGGIERO, and NAPPI, Administrative Patent Judges.
KRASS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the final rejection of claims 1-15.

The invention pertains to an asynchronous video interview system, best illustrated by reference to representative independent claim 1, reproduced as follows:

1. A system for video interviewing, comprising:

- a computer;
- a storage device accessible by said computer;
- interviewer's question video data stored on storage device;
- remote electronic access to said computer by at least one interviewee to review said interviewer's question video data;
- software executing on said computer for forwarding said interviewer's question video data to said at least one interviewee;
- a camera for capturing at least one interviewee's answer video data to said interviewer's question video data in real time for storage on said storage device together with corresponding interviewer's question video data; and
- said software executing on said computer for forwarding said at least one interviewee's answer video data to an interviewer.

The examiner relies on the following references:

Speicher	6,282,515	Aug. 28, 2001 (filed Nov. 6, 1997)
Ogden	6,311,164	Oct. 30, 2001 (filed Dec. 30, 1997)

Claims 1-15 stand rejected under 35 U.S.C. §103 as unpatentable over Ogden in view of Speicher.

Reference is made to the briefs and answer for the respective positions of appellant and the examiner.

OPINION

For the reasons set forth at pages 3-4 of the answer, the examiner contends that Ogden discloses the instant claimed subject matter but for the disclosure of the data being video data collected from the interviewer and interviewee by a camera. The examiner turns to Speicher for a teaching of using a computer camera in a video interview system (citing column 15, lines 1-51, and column 16, lines 51-59), and concludes that it would have been obvious to employ a video camera in Ogden in order to collect video data from an interviewer/interviewee "for the advantage of providing a system for interviewing . . . in order to add a visual dimension to the interview process-allowing the interviewer to get a better feeling for the interviewee (answer-page 4, citing column 17, lines 55-67, and column 18, lines 1-15, of Ogden).

Appellant argues that Ogden does not disclose or suggest that interviewers' questions and interviewees' answers comprise video data collected from a camera. Appellant contends that Speicher is of no help in this regard because Speicher's collected video data are simply video clips, digitized in advance, and submitted to the system via e-mail. Thus, argues

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appellant, there is no "real-time" exchange of video questions and video answers in an interviewing process, as required by the instant claims.

Accordingly, argues appellant, since neither reference suggests a video based interview process, the combination cannot render the instant claimed subject matter obvious.

When the examiner pointed out that Ogden suggested the use of video, at column 17, line 56, through column 18, line 5, appellant's response was to argue that Ogden nowhere suggested that the video data comprises an interviewee's answer to an interviewer's question captured in real time by a camera, and that since Ogden does not suggest the use of real time video as the information to be stored in response to an interviewer's question, it cannot suggest the instant claimed subject matter, even in combination with Speicher.

In rejecting claims under 35 U.S.C. § 103, it is incumbent upon the examiner to establish a factual basis to support the legal conclusion of obviousness. See In re Fine, 837 F.2d 1071, 1073, 5 USPQ2d 1596, 1598 (Fed. Cir. 1988). In so doing, the examiner is expected to make the factual determinations set forth

in Graham v. John Deere Co., 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), and to provide a reason why one having ordinary skill in the pertinent art would have been led to modify the prior art or to combine prior art references to arrive at the claimed invention. Such reason must stem from some teachings, suggestions or implications in the prior art as a whole or knowledge generally available to one having ordinary skill in the art. Uniroyal, Inc. v. Rudkin-Wiley Corp., 837 F.2d 1044, 1051, 5 USPQ2d 1434, 1438 (Fed. Cir.), cert. denied, 488 U.S. 825 (1988); Ashland Oil, Inc. v. Delta Resins & Refractories, Inc., 776 F.2d 281, 293, 227 USPQ 657, 664 (Fed. Cir. 1985), cert. denied, 475 U.S. 1017 (1986); ACS Hosp. Sys., Inc. v. Montefiore Hosp., 732 F.2d 1572, 1577, 221 USPQ 929, 933 (Fed. Cir. 1984). These showings by the examiner are an essential part of complying with the burden of presenting a prima facie case of obviousness. Note In re Oetiker, 977 F.2d 1443, 1445, 24 USPQ2d 1443, 1444 (Fed. Cir. 1992). If that burden is met, the burden then shifts to the applicant to overcome the prima facie case with argument and/or evidence. Obviousness is then determined on the basis of the evidence as a whole and the relative persuasiveness of the arguments. See Id.; In re Hedges, 783 F.2d 1038, 1040, 228 USPQ 685, 687 (Fed. Cir. 1986); In re Piasecki, 745 F.2d 1468, 1472, 223 USPQ 785, 788 (Fed. Cir. 1984); and In re Rinehart, 531 F.2d

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1048, 1051, 189 USPQ 143, 146-147 (CCPA 1976). Only those arguments actually made by appellant have been considered in this decision. Arguments which appellant could have made but chose not to make in the brief have not been considered and are deemed to be waived [see 37 CFR §41.67(c)(1)(vii)].

We have reviewed the evidence in this case, including the arguments of appellant and the examiner, and we conclude therefrom that the examiner has established a prima facie case of obviousness which has not been successfully rebutted by appellant's arguments.

Accordingly, we will sustain the rejection of claims 1-15 under 35 U.S.C. § 103.

The only issue before us is whether it would have been obvious, within the meaning of 35 U.S.C. § 103, to have used a camera in Ogden for capturing an "interviewee's answer video data to said interviewer's question video data in real time..."

Appellant argues that Ogden does not disclose or suggest that an interviewer's questions and/or an interviewee's answers comprise video data collected from a camera (principal brief-page

5). However, while Ogden's preferred embodiment is directed to a telephone based interview system, Ogden definitely suggests, at column 17, line 55, through column 18, line 5, that "interactive television systems" may be employed and that "video" data may be provided in Ogden's system. Accordingly, Ogden clearly suggests using video data. It would have been obvious to artisans that such data is produced from cameras. Thus, artisans would have been led, from Ogden alone, to use a camera in Ogden for obtaining video data regarding questions and answers from interviewers and interviewees, respectively. In our view, Speicher is merely a cumulative teaching that it was well known to supply video data as a means of telecommunication.

In the reply brief, at page 2, appellant acknowledges that Ogden does, indeed, mention the possibility of including video information, but appellant argues that Ogden "nowhere discloses video data that comprises an interviewee's answer to an interviewer's question captured in real time by a camera." Appellant stresses the idea of using "real time" video as the information to be stored in response to an interviewer's question.

However, Ogden makes it clear that applicant, or interviewee, involvement is in "real time" (e.g., see Ogden's abstract). While Ogden's preferred embodiment involves real time over an electronic telecommunication link, with audio, or telephonic communication being preferred, this teaching, taken together with Ogden's further suggestion, at columns 17-18, of using video data, would clearly have led the artisan to employ a camera to provide for video data regarding interviewers' questions and interviewees' answers in real time.

The abstract of Ogden, alone, provides for messages sent to and received from applicants for a job. These messages sent to an applicant are equivalent to an interviewer's questions and the messages received from an applicant are equivalent to an interviewee's answers. With Ogden's suggestion at columns 17-18, it would have been obvious to the artisan to provide for these messages in video form, in real time, while storing the messages (e.g., "script files" indicated in Ogden's abstract) on a storage device.

Since none of appellant's arguments convince us of any error in the examiner's reasonable rationale, we will sustain the rejection of claims 1-15 under 35 U.S.C. § 103.

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The examiner's decision is affirmed.

No time period for taking any subsequent action in
connection with this appeal may be extended under 37 CFR
§ 1.136(a)(1)(iv).

AFFIRMED



ERROL A. KRASS)
Administrative Patent Judge)



JOSEPH F. RUGGIERO)
Administrative Patent Judge)

BOARD OF PATENT
APPEALS AND
INTERFERENCES



ROBERT E. NAPPI)
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